

VERMONT SPEED STANDARD OFFER PURCHASE POWER AGREEMENT

This Vermont SPEED Standard Offer Purchase Power Agreement is made between _____ (“Producer”) and VEPP Inc. (“Facilitator”), a Vermont nonprofit corporation.

RECITALS

WHEREAS, Producer desires to produce and sell electricity and Other Products in accordance with the Vermont Energy Act of 2009 (“Act”), and

WHEREAS, Facilitator is the duly appointed SPEED Facilitator under 30 V.S.A. § 8005(b)(1); and

WHEREAS, Producer and Facilitator (collectively “the Parties”) desire to enter into this Agreement to provide for the purchase and sale of Electricity and Other Products Related to Electric Generation provided by Producer’s electric generating facility described in attachment A hereto (“the Project”) pursuant to and subject to the Act.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINED TERMS

Capitalized terms used in this Agreement shall have the meanings set forth above, in paragraph 32 hereof, or as defined in the Act.

2. EFFECTIVE DATE

This Agreement shall become effective upon its execution by Facilitator, and is of no force and effect whatsoever until that time.

3. SITE CONTROL

Producer warrants that it has the Site Control required for the Project, pursuant to the documentation set forth in attachment B hereto.

4. MILESTONES

- a. Within six months of the date of this Agreement, Producer shall file with the Interconnecting Utility, and shall provide Facilitator a copy of, a complete application for interconnection under Board Rule 5.500.
- b. Within three years of the date of this Agreement, the Project shall achieve Commissioning.

5. FAILURE TO ACHIEVE MILESTONES

Should Producer fail to meet either of the milestones set forth in paragraph 5 above, this Agreement shall be null and void and of no further force and effect, absent an order of the Board to the contrary. The pursuit of such an order shall be Producer’s sole remedy in this regard. Facilitator shall notify Producer

and the Board of such failure and of the termination of this Agreement. Facilitator shall have no authority to grant extensions relative to any provisions of this Agreement, including the milestones herein.

6. ADMINISTRATIVE FEE AND DEPOSIT

At the time of initial submission of this Agreement signed by Producer to Facilitator, Producer shall tender to Facilitator any administrative and/or development fees that the Board may require. Any interest earned on such fees shall be retained by Facilitator and utilized to defray Facilitator's costs of operation.

7. RATES AND TERM

Beginning with Commissioning, Facilitator shall pay Producer in accordance with the rate schedule and for the term set forth in attachment C hereto, term, and shall receive from Producer all Electricity and Other Products Related to Electric Generation as set forth in attachment C.

8. PROJECT LOCATION, DESIGN AND CONSTRUCTION.

Producer shall construct the Project at the location and in a manner substantially consistent with the specifications set forth in attachment A, Producer shall utilize Commercially Reasonable Efforts in the design, construction and operation of the Project in accordance with Good Engineering and Operating Practices, the terms and conditions of any certificate of public good and any other Regulatory Approvals issued relative to the Project, and shall be solely responsible for all costs, expenses, liabilities and other obligations associated with the Project. Producer shall comply with Board orders or rules governing the provision of Project cost data. All operations and deliveries shall be subject to the rules and regulations of the ISO-NE bulk power system in effect during the term of this Agreement, and Producer shall be responsible for payment of any costs, sanctions or charges assessed by ISO-NE arising from actions or inactions of Producer.

9. INTERCONNECTION

Producer shall be solely responsible for the negotiation, delivery and execution of the Interconnection Agreement, along with the payment of all costs and the execution of all responsibilities arising under that Agreement. Producer shall deliver to Facilitator a copy of the executed Interconnection Agreement within five business days of its execution. At such time as the Interconnection Agreement is approved, it shall be deemed part of this Agreement and a copy shall be appended as attachment D to this Agreement. Facilitator shall be named as a named insured under any policies of insurance required under the Interconnection Agreement.

10. EXCLUSIVITY

During the Term of this Agreement, Producer shall not enter into any other agreement for the sale or other conveyance of any portion of the Electricity or any Other Product that is the subject of sale under this Agreement. Producer acknowledges that, by entering into this Agreement, Producer is waiving any and all rights to seek an alternative power sales arrangement, including but not limited to an arrangement through Board rules 4.100, 4.300 and 5.100, at any time throughout the term set forth in this Agreement. Absent an order of the Board to the contrary, this waiver shall extend throughout the full term contemplated under this Agreement, even if this Agreement is terminated early for any reason by default, for cause or otherwise.

11. STATION SERVICE

Station service, if any is provided by the Interconnecting Utility, shall be priced only in accordance with any applicable tariff, special contract, order or other means approved by the Board.

12. DELIVERY OF ELECTRICITY AND TRANSFER OF OTHER PRODUCTS RELATED TO ELECTRIC GENERATION

Producer hereby unconditionally sells, transfers and assigns to Facilitator all of its right, title and interest in the Electricity and Other Products related to Electric Generation. Upon request of Facilitator, Producer shall use Commercially Reasonable Efforts to obtain, register, certify or deliver the Other Products Related to Electric Generation or any evidence of the Facilitator's right, title and interest thereto to Facilitator, to the ISO-NE Administered Markets or other markets, or as Facilitator reasonably may direct otherwise. Facilitator shall retain all right, title, and interest in all Other Products Related to Electric Generation in trust for all Vermont Distribution Utilities that are subject to prorated allocations under the Act. Facilitator shall be entitled, unilaterally and without the consent of Producer, to deal with Other Products Related to Electric Generation in any manner it determines and consistent with the Act, regardless of whether any consideration is separately stated as being received or paid for by Facilitator.

13. PAYMENT TO PRODUCER

Facilitator shall pay or cause to be paid to Producer amounts calculated in accordance with attachment C within 45 days of the end of each billing period during which Electricity and Other Products Related to Electric Generation were provided by Producer. Facilitator shall have no authority whatsoever to make payments to producer for electricity or Other Products Related to Electric Generation that are not Delivered. As a matter of administrative convenience, Facilitator may wait to send payments to Producer until the total amount due to Producer, net of any set offs, exceeds \$100.00.

14. METERING AND REPORTING REQUIREMENTS

Producer shall be responsible for meeting such metering requirements as may be established by Facilitator or by regulatory requirement, all at Producer's expense. The testing of metering equipment shall be at the discretion of Facilitator; provided, however, that Facilitator shall cause such testing to be performed not less than once every five years during the Term of this Agreement if the Project exceeds 100 kw in size. One or more Vermont Distribution Utilities may request additional verification at any time, but all costs shall be borne by the requesting Utilities should the metering prove to be accurate within 2%.

15. EVENTS OF DEFAULT

Any breach of this Agreement will constitute an event of default by Producer, as will one or more of the following:

- a. Failure to deliver any Electricity from the Project for a period of twelve consecutive months at any time after Commissioning.
- b. Producer ceases to hold any Regulatory Approval, which failure or cessation results in a lack of legal right on the part of Producer to continue to operate the Project.
- c. Any information provided by Producer relative to this Agreement or any information, representations or warranties set out in this Agreement is not true or correct in any material respect when given, or Producer commits any act of fraud in relation to this Agreement or any regulatory proceeding relating to the Project.

d. By agreement, decree, judgment or order of a court, Producer agrees to be treated as and/or is adjudicated bankrupt or insolvent, or real or personal property of the Project is sequestered or subject to the appointment of any third party and such agreement, decree, judgment, order of appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof.

e. Producer utilizes electricity, or any source of fuel other than the fuel type specified in attachment A, for the generation of electricity.

f. Producer fails or ceases to comply with Good Engineering and Operating Practices.

16. CURE PERIOD; REMEDIES OF FACILITATOR

Within five business days of learning of an event of default, Facilitator shall send a written notice to Producer and the Board specifying the default and allowing, in Facilitator's reasonable discretion, a cure period of up to 30 days unless a shorter period is ordered by the Board. If the default is not cured within the cure period allowed by Facilitator, Facilitator shall send a notice of termination effective in ten business days, which notice shall be of full force and effect absent an order of the Board to the contrary.

17. EFFECT OF TERMINATION OR EXPIRATION

Termination of this Agreement, whether by expiration or otherwise, shall not affect or prejudice any rights or obligations of either Party, including those relating to amounts payable under this Agreement up to and including the time of any termination.

18. FORCE MAJEURE

In the event of Force Majeure, Facilitator may suspend the obligations of Producer under this Agreement for a period of up to sixty days. Any further suspension or remedy for a Force Majeure event shall be in accordance with an order of the Board only.

19. SECURED LENDER RIGHTS

a. Producer shall have the right from time to time, at its cost, to enter into one or more Security Agreements upon such terms as it desires, provided that:

(i) in the case of a deed of trust, syndication agreement or similar instrument by which the trustee or syndication agent holds security on behalf of, or for the benefit of, other lenders, only the trustee or agent shall be entitled to exercise the rights and remedies under the Security Agreement as the Secured Lender on behalf of the lenders;

(ii) Facilitator have no liability whatsoever under any Security Agreement for the payment of the principal sum secured or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and the Secured Lender shall not be entitled to seek any damages against the Facilitator for any or all of the same; and

(iii) all rights acquired by a Secured Lender under any Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein.

b. While a Security Agreement remains outstanding, and provided that Facilitator has received from Producer prior written notice of the name and address of the Secured Lender, Facilitator shall provide a copy of any written notice of default or termination to the Secured Lender at such time that such notice is sent to Producer. Subject to the provisions of this Agreement, a Secured Lender may enforce any Security Agreement and acquire Producer's interest in the Project in any lawful way, subject to (1) receipt

of any required Regulatory Approvals, (2) the honoring of all obligations of Producer under this Agreement, and (3) payment of all of Facilitator's costs and expenses (including attorney fees) incurred with respect to the acquisition and any related events.

c. Facilitator, upon request of Producer, may enter into an acknowledgement and agreement, in such standard form as Facilitator may determine from time to time and subject to any Regulatory Approvals that may be required, with Producer and any Secured Lender for the purpose of implementing the Security Agreement protection provisions contained in this Agreement.

20. INDEMNIFICATION OF FACILITATOR

Facilitator shall not be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use or any property or claims of customers or contractors of the Producer for any such damages. Producer shall indemnify, defend and hold Facilitator, the State of Vermont, the Vermont Distribution Utilities, any transmission service providers and their respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "Indemnitees") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses, interest accrued thereon (including the costs and expense of, and interest accrued on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable attorney fees and reasonable disbursements in connection therewith), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of the design, construction or operation of the Project or the generation and delivery of Electricity and Other Products therefrom or any occurrence or event relating thereto, or any occurrence or event on Producer's side of the Interconnection Point, or a breach by Producer of any of its representations, warranties, obligations or covenants contained in this Agreement.

21. JOINT AND SEVERAL LIABILITY

If Producer is not a single legal entity, then all such entities comprising Producer shall be jointly and severally liable to Facilitator for all representations, warranties, obligations, covenants, and liabilities of Producer under this Agreement.

22. RECORD RETENTION

Producer and Facilitator each shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. Without limiting the generality of the foregoing, Producer shall keep all records and other documentary evidence that may be necessary to establish, substantiate or maintain any claim or title of Facilitator to any Other Products. All such records shall be maintained as required by law, but for no less than seven (7) years after the creation of the record or data. Producer shall provide or cause to be provided reasonable access to the relevant and appropriate financial and operating records and data kept by it or on its behalf relating to this Agreement reasonably required for Facilitator to comply with its obligations, or to verify billings or to verify information provided in accordance with this Agreement or relating to compliance by Producer with this Agreement.

23. PROJECT INSPECTION

Facilitator shall have the right to inspect the Project during normal business hours during the term of this Agreement, upon at least five business days' notice to Producer.

24. NOTICES

a. Unless otherwise stated, all notices pertaining to this Agreement shall be in writing and shall be transmitted, by the Party giving notice, via electronic mail, or if such method is unavailable, via facsimile, courier or hand delivery, and addressed to the other Party as follows:

If to Producer:

If to Facilitator:

b. Notice transmitted or delivered as provided above shall be deemed to have been given and received on the day it is transmitted (if by electronic mail or facsimile) or delivered (if by courier or hand delivery), provided such notice is transmitted or delivered on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. If a notice is transmitted or delivered after 5:00 p.m. local time or such day is not a business day, then such notice shall be deemed to have been given and received on the next business day. Either Party, by written notice to the other, may change its contact person, electronic mail address, facsimile number or postal address to which notices are to be sent.

25. PUBLIC RECORD ISSUES

Producer acknowledges its understanding that Facilitator is subject to Vermont's Access to Public Records law, 1 V.S.A. § 315 et seq. (Public Records Law). To the extent that Facilitator may receive requests under the Public Records Law for information provided by Producer to Facilitator, Facilitator shall notify Producer of the request not later than the next business day after the request is received. Information related to the development of the Project shall be considered, to the fullest extent permissible, to be trade secrets under 30 V.S.A. § 317(9) for purposes of application of that statute.

26. BUSINESS RELATIONSHIP

The relationship between the Facilitator and Producer is that between independent contractors, and nothing in this Agreement shall create or be deemed to create a relationship of partnership, joint venture, fiduciary, principal and agent or any other relationship between the Parties.

27. BINDING AGREEMENT

Except as set out otherwise in this Agreement, this Agreement shall not confer upon any person or entity, except the Parties and permitted assigns, any rights, interests, obligations or remedies under this Agreement.

28. ASSIGNMENT

Producer may assign its rights and duties under this Agreement to the fullest extent allowed by the Act, and any assignee of Producer shall give Facilitator written notice of the assignment within thirty days of the date of the assignment. Nothing in this provision shall be deemed to alter Producer's responsibility or obligations to obtain any and all Regulatory Approvals that may be required in conjunction with a transfer of all or part of any legal interest in the Project. Facilitator may not assign its rights and duties under this Agreement absent consent of the Board.

29. FACILITATOR SETOFF RIGHTS

In addition to its other rights of setoff under this Agreement or otherwise arising in law or equity, Facilitator may set off any amounts owed to it by Producer to it against any monies owed by Facilitator to Producer.

30. TIME OF ESSENCE

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

31. FURTHER ASSURANCES

Each Party, from time to time on written request of the other Party, shall perform further acts, including execution of documents, as may be reasonably may be required in order to fully perform and to more effectively implement and carry out the terms of this Agreement, provided that such acts shall not be inconsistent with this Agreement or any law or Regulatory Approvals pertaining to the Project.

32. DEFINITIONS

Any capitalized term used herein and defined in the Act shall have the meaning set forth in the Act. The following additional terms shall have the respective meanings set forth below for purposes of this Agreement:

- a. Commercially Reasonable Efforts means efforts that are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and that do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities that are reasonable in nature and amount in the context of the transaction contemplated by this Agreement.
- b. Interconnection Agreement means the agreement or agreements entered into between the Interconnecting Utility and Producer with respect to the connection of the Project to the Distribution System.
- c. Interconnection Costs mean all costs which are payable by Producer with respect to the interconnection of the Facility to the Distribution System.
- d. Interconnecting Utility means the electric utility with which Producer enters into the Interconnection Agreement.
- e. Delivered, in the context of Electricity, means delivered to the Interconnection Point and successfully injected into the Distribution System, and Deliver has the corresponding meaning.
- f. Distribution System means the system connected to the ISO-NE-Controlled Grid for distributing Electricity at voltages of 50kV or less, which is owned and operated by the Interconnecting Utility, and includes any structures, equipment or other things used for that purpose.
- g. Electricity means electric energy, measured in kWh.

h. Force Majeure means any act, event, cause or condition that (i) prevents a Party from performing its obligations, and (ii) is beyond the affected Party's reasonable control, except that no act, event, cause or condition shall be considered to be an event of Force Majeure:

- (1) if and to the extent the Party seeking to invoke Force Majeure has caused or contributed to the applicable act, event, cause or condition by its act, fault or negligence or has failed to use Commercially Reasonable Efforts to prevent or remedy such act, event, cause, or condition and, so far as possible and within a reasonable time period, remove it (except in the case of strikes, lockouts and other labor disturbances, the settlement of which shall be wholly within the discretion of the party involved);
- (2) if the act, event, cause or condition involves a failure or delay on the party of the Interconnecting Utility or its agents to complete network or system upgrades or otherwise perform responsibilities under an Interconnection Agreement, and such failure or delay is attributable to a change in specifications of the Interconnection Point or the Project by the Producer;
- (3) if the act, event, cause or condition is the result of a violation of law or the terms of any regulatory approval by the Party seeking to invoke Force Majeure; or
- (4) if the act, event, cause or condition was caused by a lack of funds or other financial cause.

i. Good Engineering and Operating Practices means any of the practices, methods and activities adopted by a significant portion of the North America electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities that, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator of Electricity in light of the facts known at the time the decision was made, reasonably could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and Laws and Regulations.

j. ISO-NE means the Independent System Operator-New England, or its successor.

k. ISO-NE Administered Markets has the meaning given to it by the ISO-NE Market Rules.

l. ISO-NE Controlled Grid has the meaning given to it by the ISO-NE Market Rules

m. Meter means a meter owned by or under the control of the Interconnecting Utility that measures and records the quantity of Electricity which passes through it.

n. Other Products Related to Electric Generation means all products, in addition to Electricity, listed on attachment C as being conveyed from Producer to Facilitator.

o. Secured Lender means the lender(s) under a Security Agreement.

p. Security Agreement means an agreement or instrument, including a deed or trust or similar instrument securing bonds or debentures, or other evidences of indebtedness, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Producer's Interest granted by the Producer that is security for any

indebtedness, liability or obligation of the Producer, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

- q. Station Service means the Electricity used at the Project for excitation, on-site maintenance and operation of auxiliary and other facilities that are essential to operation of the Project.
- r. Regulatory Approval means the receipt of any federal, state or local permit, license or other assent of any governmental body, where such assent is required for lawful construction and/or operation of the Project.
- s. Site Control means proof of dominion over real property to the extent necessary to construct the Project in accordance with the description set forth on attachment A. Site control may be established by (1) fee simple title to the property; (2) a valid written leasehold interest in the property for at least the duration of the contract term, (3) a valid written option, unconditionally exercisable by Producer, to purchase or lease such real property, or (4) a duly executed contract for the purchase or lease of such property.

33. MISCELLANEOUS

a. Headings

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

b. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement.

c. Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver or any provision of this Agreement shall constitute a waiver of any other provision nor shall it constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

d. Board jurisdiction

The Board shall have jurisdiction to resolve disputes arising under or in connection with this Agreement, to the fullest extent allowed by law.

IN WITNESS WHEREOF, Producer and Facilitator have executed this instrument on the respective dates set forth below.

_____(PRODUCER)

By: _____
Duly authorized agent
Dated:

VEPP Inc., acting as SPEED Facilitator

By: _____

John R. Spencer, Executive Director

Dated:

Attachment A

Description of Facility

(The description must include, at a minimum: the capacity of the facility, the fuel type of facility, the street address where the facility will be located, and denomination of the interconnecting utility)

Attachment B

Documentation of Site Control (In order to demonstrate site control, Producer shall provide evidence of: i) fee simple title to such real property or ii) a valid written leasehold interest for such real property or iii) a valid written option, exercisable unconditionally by the Producer or its assignee, to purchase or lease such real property or iv) a duly executed contract for the purchase or lease of such real property.)

Attachment C
Rate Schedule and Term

Attachment D

Interconnection Agreement

(The Interconnection Agreement with the Interconnecting Utility must be filed within five business days of its execution.)